

**DiFrancesco, Bateman, Coley, Yospin,
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Attorneys for Defendant, QualCare, Inc.,

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

NEUROSURGICAL SPINE SPECIALISTS
OF NJ, a/s/o AUGUSTA
SIMPSON,

Plaintiff,
-vs-

Civil Action No.
2:12-cv-05210-CCC-JAD

QUALCARE, INC., ABC CORP. (1-10)
(said names being fictitious and unknown
entities),

ANSWER TO AMENDED COMPLAINT

Defendants

Defendant, QUALCARE, INC., a New Jersey Corporation, by way of Answer to the
Amended Complaint states:

THE PARTIES

1. Admitted.
2. Admitted.
3. Defendant, QualCare denies all allegations contained in paragraph 3 except to
admit that it is a third party administrator.
4. Admitted.

5. Denied.
6. Denied.
7. Admitted as to QualCare otherwise this defendant is without sufficient information to form a belief regarding Englewood Hospital.
8. Denied that QualCare issued insurance.

SUBSTANTIVE ALLEGATIONS

9. Denied.
10. Admitted.
11. Admitted as to the definition but denied that QualCare is bound by a “usual and customary fee.”
12. Denied.
13. Denied that the amount charged by plaintiff was reasonable or customary.
Admitted as to amounts paid.
14. Denied.
15. Denied.
16. Admitted.
17. QualCare denies that plaintiff is entitled to damages.

FIRST COUNT (Violation of ERISA)

18. Defendant, QualCare, Inc. repeats and re-alleges its answers to the allegations of paragraphs 1 through 17 as it fully sets forth length herein.

19. Admitted.
20. Admitted.

21. Denied as to QualCare.

22. QualCare denies that QualCare exercises discretionary authority but admits it is a fiduciary.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted

27. Admitted.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

SECOND COUNT
(ERISA-Breach of Fiduciary Duty)

32. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 31 as if fully set forth at length herein.

33. Denied.

34. Admitted.

35. Denied.

36. Admitted as to QualCare.

37. Denied.

38. Denied.

THIRD COUNT
(Breach of Contract- QualCare)

39. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 38 as if fully set forth at length herein.

40. Admitted.

41. Denied.

42. Denied.

43. Denied.

FOURTH COUNT
(Breach of Contract – Englewood Hospital)

44. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 43 as if fully set forth at length herein.

45. Denied.

46. As the allegations contained in paragraph 46 of the Fourth Count of the Amended Complaint do not apply to QualCare, it neither admits nor denies the allegations and leaves plaintiff to its proofs.

47. As the allegations contained in paragraph 47 of the Fourth Count of the Amended Complaint do not apply to Defendant QualCare, it neither admits nor denies the allegations but leaves plaintiff to its proofs.

48. As the allegations contained in paragraph 48 of the Fourth Count of the Amended Complaint do not apply to Defendant QualCare, it neither admits nor denies the allegations but leaves plaintiff to its proofs.

FIFTH COUNT
(Promissory Estoppel)

49. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 48 as if fully set forth at length herein.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

SIXTH COUNT
(Negligent Misrepresentation)

57. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 56 as if fully set forth at length herein.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

SEVENTH COUNT
(Unjust Enrichment)

63. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 62 as if fully set forth at length herein.

64. Admitted as to the refusal to pay reasonable and customary fees but denied that defendant confirmed terms that were contrary to the terms of the Summary Plan Description.

65. Denied.

66. Denied.

EIGHTH COUNT

67. Defendant, QualCare, Inc. repeats its answers to the allegations of paragraphs 1 through 66 as if fully set forth at length herein.

68. Denied.

DESIGNATION OF TRIAL COUNSEL

The undersigned hereby designates Lisa M. Fittipaldi, Esq. as trial counsel for the within matter.

FIRST SEPARATE DEFENSE

QualCare is not the payor of claims. QualCare provides network access and Third Party claims services. It followed the plan design issued by Englewood Hospital and Medical Center Employee Health Benefit Plan, when it paid the Plaintiff.

SECOND SEPARATE DEFENSE

QualCare is not in privity of contract with Augusta Simpson. It administers the health plan for Englewood Hospital and Medical Center Employee Health Benefit Plan, who is the payor of claims. The claim is not properly brought against QualCare.

THIRD SEPARATE DEFENSE

QualCare followed the plan design of Englewood Hospital and Medical Center Employee Health Benefit Plan and paid Neurosurgical Spine Specialists of NJ , as an out of network provider, according to the fee schedule set forth in the plan. Augusta Simpson chose to use an out of network provider. Her insurance plan states that out of network providers will be paid in accord with the fee schedule.

**DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis, Lehrer & Flaum, P.C.**

By: *s/ Lisa M. Fittipaldi*
Lisa M. Fittipaldi

Dated: February 11, 2013